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Germanus's life, which as it stands makes the valley of that victory, "surrounded by mountains in the middle," impossible physical geography.

The introduction, especially the parts referring to Bede's life and works, leaves little to be desired, illuminated as the scanty materials for his life are, by side-lights from other sources. Accurate as to text, encyclopædic as to notes, fully and carefully indexed, with marginal summaries, judicious use of various styles of type, chronological and other tables, one can recommend this as a model of what an edition should be and can wish it the fate of the original Bede, which because of its excellence so far displaced previous works of the kind that they fell into disuse and came gradually to be destroyed.

WILBUR C. ABBOTT.

A Preliminary Treatise on Evidence at the Common Law. Part I. Development of Trial by Jury. By JAMES BRADLEY THAYER, Weld Professor of Law at Harvard University. (Boston : Little, Brown and Co. 1896. Pp. x., 196.)

THIS little book is one of the most valuable contributions to English constitutional and legal history published in this country. It is doubly interesting and instructive, coming, as it does, from the pen of a true historical scholar as well as a master of modern law. The book has been eagerly awaited ever since portions were published in the *Harvard Law Review* some five or six years ago, and now that it has finally appeared it fully meets all expectations. On every page is given evidence of thorough acquaintance with the sources and of ability to make the right use of them.

The subject of the jury is of great importance and of far-reaching connections. In the volume before us it is treated with reference mainly to its bearing on the law of evidence. The English common-law system of evidence is radically peculiar, and its "law of evidence" is due to the institution of the jury, which England alone has used continuously and, in a strange fashion, has developed.

In the first chapter the earlier modes of trial are described and a very satisfactory explanation is given of the *secta* or suit, a relic of which is still found in modern legal phraseology.

The origin of the jury has been ascribed to the Romans, to the Celts, to Alfred the Great, and even to the Crusaders, but Professor Thayer agrees with Brunner and Stubbs and the later authorities in ascribing its introduction into England to William the Conqueror, from Normandy, where it had continued since its use by Charles the Great in the form of inquisitions in civil and in fiscal matters.

During the Norman period in England it was used by the kings in securing testimony regarding laws, customs, possessions, etc., and in eliciting evidence in connection with civil suits, but the real beginning

of its formal and systematic use is in the reign of Henry II. Up to his time its occasional use had been by royal favor; he established it as a matter of right in certain civil cases and extended its application. In the documents of his reign it appears in a two-fold form: as an inquest, assize or trial jury, and as a presentment or indictment jury. In either form it has been well defined as a "body of impartial witnesses, summoned by royal writ or authority and sworn" (hence the name, *juratores*, jurors) "before officers of the king, to declare the facts in the case or to indict persons guilty of crime." This shows the jurors in their original character as witnesses, distinguishes them from the compurgators and party witnesses of the early forms of trial, and serves to mark the contrast between the jury and the ordeal and duel. It is also worthy of note that the jury, which is regarded as the palladium of popular rights and liberty, was at first confined exclusively to the king's courts and not allowed except by royal authority.

At this point three problems arise, to the consideration of which the remaining chapters are devoted: first, to account for the substitution of the jury for other modes of trial in criminal cases; secondly, to explain the evolution of the modern juror from the early witness; and thirdly, to trace the gradual control and regulation of the testimony given.

Henry had established and extended the use of the jury in civil cases, but its application to criminal cases was not so simple. By the older law men had tried their own cases; hence "to put upon a man who had the right to go to the proof—where he produced the persons or things that cleared him—the necessity of submitting himself to the test of what a set of strangers might say, witnesses selected by a public officer—this was a wonderful thing." Certain events prepared the way. The assize of Clarendon in 1166 abolished compurgation as a mode of trial in ordinary criminal cases in the king's courts, and the Lateran Council in 1215 condemned the ordeal, a decision soon accepted in England. This left a gap ready to be filled by the new method. Inasmuch, however, as it could be used only by consent of the accused, the custom arose of compulsion by *peine forte et dure*, of which we have the first instance in 1275 and which continued until 1772.

The number of jurors varied from nine to forty, nor was unanimity required at first. Even after the number became fixed at twelve it was only in the latter part of the fourteenth century that the principle was established that in all inquests the twelve must agree in order to a good verdict. At first the jurors were witnesses, being chosen as the best informed on the matter. This implied that they were to inform themselves, and as late as 1427 the parties asked to be furnished with a list of the jurors so as to inform them. Sometimes members of the jury informed each other. Indeed, what we call a special jury seems always to have been customary, particularly in disputes over deeds, where the original jury and the witnesses of the deed were combined. In the second half of the fourteenth century a sharper distinction began to be made and the verdict proceeded from two sources, the jurors' own knowledge and the knowl-

edge derived from witnesses in open court. The jurors are thus both givers and weighers of evidence. Not until the latter half of the fifteenth century were the two classes separated and the principle established that jurors are not to be prejudiced by previous knowledge of facts. Thus from being primarily givers of evidence, they came to be only weighers of evidence.

Lastly, in regard to the nature of this evidence. At the first all kinds of evidence might be given; all through the period when the jury proceeded on their own knowledge they listened to perfectly unsupported narration of fact from counsel not under oath. There was no sifting of evidence nor cross-examination. No control was attempted until the last half of the fourteenth century, and even in the sixteenth and seventeenth centuries juries were allowed to act on their own private knowledge and on documents not known to the court or to the parties. A new trial seemed the only effective way of correcting errors.

It is hoped that this brief outline will show the importance and interest of the subject and turn the attention of many to its scholarly treatment in this little volume.

CHARLES L. WELLS.

Les Gildes Marchandes dans les Pays-Bas au Moyen Age. Par HERMAN VANDER LINDEN. [Recueil de Travaux publiés par la Faculté de Philosophie et Lettres de l'Université de Gand, 15e Fascicule]. (Gand, 1896. Pp. viii, 126.)

THOUGH much has been written in recent years on the functions of the gild merchant and its influence upon municipal development by Hegel, Doren, Von Below and others, every special investigation of the subject as regards some particular country or region is welcome. Historians still maintain divergent views concerning the relations of the gild merchant to the craft fraternities and concerning its influence upon the origin of the municipal constitution. The questions at issue cannot be definitely settled until we have more data, more documentary material like that which we find in Professor Vander Linden's scholarly monograph.

He believes that this gild originated spontaneously, that it did not emanate from any earlier institution. In the eleventh century there was an expansion of trade and industry; the number of merchants increased, and they felt the need of organization to protect their common interests. There are two periods in the history of the gild merchant in the Netherlands. In the first period, from the eleventh to the thirteenth century, this gild was a private association, having no public functions; it was open to all merchants, and even artisans were admitted to membership; in fact, during the twelfth century, it was considered desirable to secure as many members as possible. In the second period, which begins in the thirteenth century, the gild merchant had the monopoly of the principal branch or branches of commerce in the town, and became a public